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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/788,797	02/27/2004	Mihael Ankerst	03-0119A	7859

74576 7590 10/15/2008  
HUGH P. GORTLER  
23 Arrivo Drive  
Mission Viejo, CA 92692

EXAMINER
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CHANNAVAJALA, SRIRAMA T

ART UNIT	PAPER NUMBER
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2166

MAIL DATE	DELIVERY MODE
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10/15/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/788,797	<b>Applicant(s)</b> ANKERST, MIHAEL	
	<b>Examiner</b> SRIRAMA CHANNAVAJJALA	<b>Art Unit</b> 2166	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 August 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-94 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-72 is/are allowed.
- 6) ☐ Claim(s) 73-94 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION**

**Response to Amendment**

1. Claims 1-94 are pending in this application.
2. Examiner acknowledges applicant's response to non-final office action filed on 8/13/2008.
3. Examiner acknowledges applicant's "rule 1.132 declaration by Inventor" filed on 8/13/2008.
4. Claims 73, 82, 84 and 93 have been amended [8/13/2008].

Note: *In the specification, page 1, line 16, co-pending US application No. # 10/769,066 updated status required in response to this office action.*

**Drawings**

5. The Drawings filed on 2/27/2004 are acceptable for examination purpose

**Claim Rejections - 35 USC § 101**

6. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 73-94 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The claims [as amended] 73-94 lack the necessary physical articles or objects to constitute a machine or a manufacture within the meaning of 35 USC 101. They are clearly not a series of steps or acts to be a process nor are they a combination of

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chemical compounds to be a composition of matter. As such they fall within a statutory category. They are, at best, functional descriptive material *per se*.

***Claim Rejections - 35 USC § 112***

7. As to claim 73 [as amended], applicant appear to be invoking 112, sixth paragraph “means for” type language, but it is unclear what “structures” are being used to perform the functions. No particular structures are identified in the specification that would perform the function. It is noted that part of the claim 73 merely directed to “means for associating a frame with each of a number of intervals in a period; “means for identifying first data characteristic....expected quantity”;, while rest of the limitations do not direct to “means for”. One of skill in the art would not be apprised of what structures are intended to be encompassed by the claims. Nor would it be clear what the structures are intended to accomplish. It is unclear whether claim 73 is directed to functional or non-functional descriptive language.

Claims 74-83 depend from claim 73 also having similar problem as stated in claim 73 and claims 74-83 are rejected on that basis.

8. As to claim 84 [as amended], applicant appear to be invoking 112, sixth paragraph “means for” type language, but it is unclear what “structures” are being used to perform the functions. No particular structures are identified in the specification that would perform the function. The claim merely directed to “means for associating a

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frame with each of a number of intervals in a period; “means for identifying first data characteristic..... “. One of skill in the art would not be apprised of what structures are intended to be encompassed by the claims. Nor would it be clear what the structures are intended to accomplish. Further it is also noted that all claim limitations are having “means for....” except limitations “ a data mining system configured .....intervals”; “ a display apparatus....visual characteristic”. It is therefore, unclear whether claim 84 is directed to functional or non-functional descriptive language.

Claims 85-94 depend from claim 84 also having similar problem as stated in claim 84 and claims 85-94 are rejected on that basis.

### ***Response to Arguments***

9. Examiner noted applicant's remarks at page 24-25, in view of applicant's filed “rule 1.132 declaration by inventor”, the rejection under 35 USC 102(a) as set forth in the previous office action is hereby withdrawn. As stated above, examiner maintains 35 USC 101 rejection as set forth in the previous office action because claims 73-94 lack the necessary physical article or objects to constitute a machine or a manufacture within the meaning of 35 USC 101.

Further, in view of applicant's amendment to claims 73,82,84,93, invoking 35 USC 112 6<sup>th</sup> paragraph, examiner rejected independent claims 73, 84 as stated above, further claims 74-83, 85-94 depend from claims 73,84 are also rejected in the above analysis.

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10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Srirama Channavajjala whose telephone number is 571-272-4108. The examiner can normally be reached on Monday-Friday from 8:00 AM to 5:30 PM Eastern Time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alam, Hosain, T, can be reached on (571) 272-3978. The fax phone numbers for the organization where the application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free)

/Srirama Channavajjala/  
Primary Examiner, Art Unit 2166  
October 07, 2008